



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

L. Preston Bryant, Jr.
Secretary of Natural Resources

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David K. Paylor
Director

November 13, 2009

Mr. Charles Oliver
Plant Manager
Mirant Potomac River, LLC
1400 North Royal Street
Alexandria, VA 22314

WARNING LETTER

Subject: Deviations from Opacity Standard on August 28, 2009

Mirant Potomac River Generating Station

DEQ Registration No. 70228

Dear Mr. Oliver:

The Department of Environmental Quality ("DEQ" or "the Department") has reason to believe that the Potomac River, LLC (Mirant) Facility located at 1400 North Royal St., Alexandria, Virginia (DEQ Facility Registration No. 70228) (the "Facility") may be in violation of the Air Pollution Control Law and Regulations.

This letter addresses conditions at the Facility named above, and also cites compliance requirements of the Air Pollution Control Law and Regulations. Pursuant to Va. Code § 10.1-1309 (A) (vi), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 et seq. The Department requests that you respond **within 20 days of receipt of this letter**.

OBSERVATIONS AND LEGAL REQUIREMENTS

On September 8, 2009, Virginia Department of Environmental Quality (DEQ), Northern Regional Office (NRO) staff (Justin Wilkinson) received electronic correspondence from facility personnel (Ms. Nushat Thomas-Environmental Analyst) which included data from the Continuous Opacity Monitoring System (COMS), the Sulfur Dioxide Continuous Emissions Monitoring System (CEMS), and operational load data for the time period of August 28, 2009, through September 3, 2009. Subsequent to the Department's initial review of the data provided, the Department requested additional information regarding several opacity data points presented in the report. On September 25, 2009, and September 29, 2009, additional information was provided by facility personnel (Mr. Jerry Lamote-Operations Manager). The following factual observations by the DEQ staff describe the review of the documents provided to DEQ staff, and identify applicable legal requirements:

Observations:

Review of the COMS data provided by the source for stack CSC12, appeared to indicate that the 6-minute average opacity readings were 24.6% and 61.7% at 12:36 p.m. and 12:42 p.m. respectively.; and 29.2% and 21.3% at 1:42 p.m. and 1:48 p.m. respectively on August 28, 2009. Review of the causes of the opacity events provided by the facility in the electronic correspondence dated September 25, 2009, and September 29, 2009, did not appear to indicate that the opacity events which occurred are exempt events due to startup, shutdown, or malfunctions.

Legal Requirements:

In accordance with 9 VAC 5-80-850 and 9 VAC 5-40-80, Condition 33. of the facility's current Virginia Stationary Source Permit to Operate, dated July 31, 2008, states,

"Visible Emission Limit - Visible emissions from MS1 and MS4 shall not exceed 20% opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 60% opacity as determined by the EPA Reference Method 9 (reference 40 CFR Part 60, Appendix A). The COMS may be used to satisfy the visible emission evaluation requirement in lieu of 40 CFR Part 60, Appendix A, Method 9. In the event that the COMS are used in lieu of a 40 CFR Part 60, Appendix A, Method 9 evaluation, the reported data shall include averages of all six-minute continuous periods within the reported period and within the duration of any mass emission performance tests being conducted. It is the responsibility of the permittee to demonstrate that the monitoring system meets the requirements of the applicable performance specification defined in 40 CFR Part 60, Appendix B, that the monitoring system is properly maintained and operated, and that the resulting data has not been

altered in any way. In the event that the COMS data indicate compliance for a time period during which Method 9 data indicates non-compliance, the Method 9 data may be used to determine compliance with the visible emission limit. This condition applies at all times except during startup, shutdown, and malfunction."

In accordance with 9 VAC 5-80-890, 9 VAC 5-40-40, and 9 VAC 5-40-20 A.3., Condition 16. of the facility's current Virginia Stationary Source Permit to Operate, dated July 31, 2008, states,

"Monitoring - Continuous Opacity Monitoring Systems (COMS) - Continuous Opacity Monitoring Systems meeting the design specifications of 40 CFR Part 60, Appendix B, shall be installed and maintained to measure and record the opacity of emissions from MS1 and MS4. Except where otherwise indicated in this permit, the COMS shall be installed, calibrated, maintained, and operated in accordance with the requirements of 40 CFR 60.13 and Appendix B or DEQ-approved procedures which are equivalent to the requirements of 40 CFR 60.13 and Appendix B. Data shall be reduced to six-minute averages. The COMS may be used to satisfy the visible emission evaluation requirement in lieu of 40 CFR Part 60, Appendix A, Method 9. In the event that the COMS are used in lieu of a 40 CFR Part 60, Appendix A, Method 9 evaluation, the reported data shall include averages of all six-minute continuous periods within the reported time frame and within the duration of any mass emission performance tests being conducted. It is the responsibility of the permittee to demonstrate that the monitoring system meets the requirements of the applicable performance specification defined in 40 CFR Part 60, Appendix B, that the monitoring system is properly maintained and operated, and that the resulting data have not been altered in any way. In the event that the COMS data indicate compliance for a period during which Method 9 data indicates non-compliance, the Method 9 data may be used to determine compliance with the visible emission limit."

§ 10.1-1307.3(B.) of the Code of Virginia states,

"The Executive Director or his duly authorized representative may pursue enforcement action for a violation of opacity requirements or limits based on (i) visual observations conducted pursuant to methods approved by the U.S. Environmental Protection Agency, (ii) data from certified continuous opacity monitors, or (iii) other methods approved by the U.S. Environmental Protection Agency."

9 VAC 5-40-20(A.)(3.) of the Virginia Administrative Code states,

“Compliance with opacity standards in this chapter may be determined by one or more of the following means:

a. Conducting observations in accordance with Reference Method 9 or any alternative method approved by EPA. For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the emission test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards.

b. Evaluation of data resulting from use of continuous monitoring by transmissometer, provided the instrument used meets Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and that the resulting data have not been altered in any way.

c. Use of any other method approved by EPA.”

ENFORCEMENT AUTHORITY

Va. Code § 10.1-1316 of the Air Pollution Control Law provides for an injunction for any violation of the Air Pollution Control Law, the Air Board regulations, an order, or permit condition, and provides for a civil penalty up to \$32,500 per day of each violation of the Air Pollution Control Law, regulation, order, or permit condition. In addition, Va. Code §§ 10.1-1307 and 10.1-1309 authorizes the Air Pollution Control Board to issue orders to any person to comply with the Air Pollution Control Law and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the Air Pollution Control Law and regulations, and to impose a civil penalty of not more than \$10,000. Va. Code §§ 10.1-1320 and 10.1-1309.1 provide for other additional penalties.

The Court has the inherent authority to enforce its injunction, and is authorized to award the Commonwealth its attorneys' fees and costs.

FUTURE ACTIONS

After reviewing this letter, please respond in writing to DEQ **within 20 days of receipt of this letter** detailing actions you have taken or will be taking to ensure compliance with state law and regulations. Specifically, indicate what corrective actions will be implemented by your Facility, including development and implementation of a compliance assurance preventative maintenance program and monitoring strategy for all emission sources. If corrective action will take longer than 90 days to complete, you may be asked to sign a Letter of Agreement or enter into a Consent Order with the Department to formalize the plan and schedule. *It is DEQ policy that appropriate, timely, corrective*

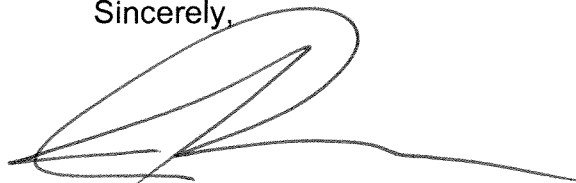
action undertaken in response to a Warning Letter will avoid adversarial enforcement proceedings and the assessment of civil charges or penalties.

Please advise us if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. If you complete the Process for Early Dispute Resolution and are not satisfied with the resolution, you may request in writing that DEQ take all necessary steps to issue a case decision where appropriate. For further information on the Process for Early Dispute Resolution, please visit the Department's website under "Laws & Regulations" and "DEQ regulations" at the URL below or ask the DEQ contact listed below.

[http://www.deq.virginia.gov/regulations/pdf/Process for Early Dispute Resolution 8260532.pdf](http://www.deq.virginia.gov/regulations/pdf/Process%20for%20Early%20Dispute%20Resolution%208260532.pdf)

Please direct written materials to my attention. If you have questions or wish to arrange a meeting, you may reach me directly at (703) 583-3820 or jawilkinson@deq.virginia.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justin Wilkinson', with a long horizontal flourish extending to the right.

Justin Wilkinson
Air Compliance Inspector, Sr.

cc: Facility Air Enforcement File